

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SALVADOR VENEGAS,

Plaintiff,

v.

E. MENDOZA, et al.,

Defendants.

Case No. 1:21-cv-00962-EPG (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT CERTAIN
CLAIMS AND DEFENDANTS BE
DISMISSED

(ECF Nos. 1, 11, 12)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS

ORDER DIRECTING CLERK OF COURT TO
ASSIGN A DISTRICT JUDGE

Plaintiff Salvador Venegas ("Plaintiff") is a state inmate proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff filed the complaint commencing this action on June 21, 2021.¹ (ECF No. 1.) On August 13, 2021, the Court screened Plaintiff's complaint and found that Plaintiff stated claims for violations of the following constitutional rights: Eighth Amendment excessive force against Defendants Mendoza, Grimsley, Cornejo, Navarro, Layshot, and Mattingly; First Amendment retaliation against Defendants Mendoza, Grimsley, Cornejo, Navarro, and John Doe 1; Fourteenth Amendment procedural due process against John Doe 2; Eighth Amendment deliberate indifference to serious medical needs against Defendant Cahapisan; Eighth Amendment

¹ Plaintiff's complaint was unsigned. (See ECF No. 1.) On August 26, 2021, Plaintiff submitted a signed version of the complaint. (ECF No. 12.)

1 conditions of confinement against Defendant Muñoz; and First Amendment access to mail against
2 Defendants Mendoza, Grimsley, Cornejo, and Navarro. (ECF No. 10.) The Court found that
3 Plaintiff failed to state any other claims. (*Id.*) Plaintiff was given thirty days to either:

- 4 a. File a First Amended Complaint;
- 5 b. Notify the Court in writing that he wishes to proceed only on the following
6 claims: Eighth Amendment excessive force against Defendants Mendoza,
7 Grimsley, Cornejo, Navarro, Layshot, and Mattingly; First Amendment retaliation
8 against Defendants Mendoza, Grimsley, Cornejo, Navarro, and John Doe 1;
9 Fourteenth Amendment procedural due process against John Doe 2; Eighth
10 Amendment deliberate indifference to serious medical needs against Defendant
11 Cahapisan; Eighth Amendment conditions of confinement against Defendant
12 Muñoz; and First Amendment access to mail against Defendants Mendoza,
13 Grimsley, Cornejo, and Navarro; or
- 14 c. Notify the Court in writing that he wants to stand on this complaint.

15 (*Id.* at 27-28.) On August 17, 2021, Plaintiff filed a notice stating that he wishes to proceed only
16 on the claims found cognizable in the screening order. (ECF No. 11.)

17 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court is directed to assign a
18 district judge to this case.

19 Further, for the reasons set forth in the Court's screening order entered on August 13,
20 2021 (ECF No. 10), and because Plaintiff has notified the Court that he wants to proceed only on
21 the claims found cognizable in the screening order (ECF No. 11), it is HEREBY
22 RECOMMENDED that:

- 23 1. All claims and defendants be dismissed, except for the following claims: Eighth
24 Amendment excessive force against Defendants Mendoza, Grimsley, Cornejo,
25 Navarro, Layshot, and Mattingly; First Amendment retaliation against Defendants
26 Mendoza, Grimsley, Cornejo, Navarro, and John Doe 1; Fourteenth Amendment
27 procedural due process against John Doe 2; Eighth Amendment deliberate indifference
28 to serious medical needs against Defendant Cahapisan; Eighth Amendment conditions
of confinement against Defendant Muñoz; and First Amendment access to mail
against Defendants Mendoza, Grimsley, Cornejo, and Navarro; and
2. The Clerk of Court be directed to add Grimsley, John Doe 1, and John Doe 2 as
defendants and to terminate Lieutenant Thomas, Preciado, Warden Shirley, Lieutenant
Bracken, Lieutenant Brewster, the California Department of Corrections and

Rehabilitations, and Grimsky as defendants on the docket.

These findings and recommendations will be submitted to the United States district judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: August 30, 2021

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE